

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MALAK FUSTOK, INDIVIDUALLY §  
AND AS TRUSTEE AND D/B/A ABDEL §  
K. FUSTOK LIFE INSURANCE TRUST §  
AND ABDEL K. FUSTOK AND MALAK §  
FUSTOK JOINT LIFE INSURANCE §  
TRUST, §

Plaintiff,

V.

MIDSOUTH BANK, N.A. and §  
AMERITAS LIFE INSURANCE CORP., §

Defendants.

C.A. No. 4:17-cv-2275

## **NOTICE OF REMOVAL**

Defendant Ameritas Life Insurance Corp. (“Ameritas”) files this notice of removal and states:

1. **The Lawsuit.** This action was filed on June 21, 2017, in the 133<sup>rd</sup> Judicial District Court of Harris County, Texas, being numbered 2017-41521 on the docket of said court, and being a suit by Plaintiff Malak Fustok (“Fustok”), Individually and as Trustee and d/b/a Abdel K. Fustok Life Insurance Trust and Abdel K. Fustok and Malak Fustok Joint Life Insurance Trust, for damages and extra-contractual damages arising out of the surrender of a life insurance policy that Ameritas issued on the life of Abdel K. Fustok, which surrender was made by Defendant Midsouth Bank N.A. (“Midsouth Bank”) pursuant to an Assignment of Life Insurance Policy as Collateral form. On June 23, 2017, this action was transferred to the 164<sup>th</sup> Judicial District Court of Harris County, Texas

**2. Diversity Jurisdiction.** Complete diversity of citizenship exists between Fustok

and Defendants, as they are citizens of different states. Fustok was a citizen of Texas, both at the time this action was filed and as of the date of this removal. Ameritas was a Nebraska corporation with its principal office and place of business in Lincoln, Nebraska, both at the time this action was filed and as of the date of this removal. Ameritas thus was and is a citizen of Nebraska and is not a citizen of Texas. Midsouth Bank was a national bank with its designated main office in Lafayette, Louisiana, both at the time this action was filed and as of the date of this removal. Pursuant to 28 U.S.C. § 1348, Midsouth Bank thus was and is a citizen of Louisiana and is not a citizen of Texas.<sup>1</sup>

The amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. In Plaintiff's Original Petition (the "Complaint"), Fustok contends that this action "involves claims for monetary damages in excess of \$1,000,000.00."

All told, the Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, and this action may be removed by Ameritas pursuant to 28 U.S.C. § 1441(b). Venue is proper in this Court under 28 U.S.C. § 1441(a), as this action was pending in a state court within this district and division.

**3. Consent to Removal.** As evidenced by the consent attached hereto as Exhibit A, Midsouth Bank consents to the removal of this case.

**4. State Court Documents Attached.** Ameritas's registered agent received the Citation and a copy of the Complaint on June 27, 2017, which is the first time Ameritas received, through service or otherwise, a copy of the initial pleading setting forth the claim for relief upon which this action is based. Midsouth Bank's registered agent received the Citation and a copy of the Complaint on June 28, 2017, which is the first time Midsouth Bank received, through service

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<sup>1</sup> See *Wachovia Bank v. Schmidt*, 546 U.S. 303, 307 (2006) (holding that "a national bank, for § 1348 purposes, is a citizen of the State in which its main office, as set forth in its articles of association, is located").

or otherwise, a copy of the initial pleading setting forth the claim for relief upon which this action is based. As such, this removal is timely under 28 U.S.C. § 1446(b). Attached hereto as Exhibit B are true and correct copies of the only process, pleadings, or orders received or filed by Defendants in this action, and this exhibit includes all of the documents that were in the state court's file as of the filing of this removal. Attached hereto as Exhibit C is a true and correct copy of the state court docket sheet.

5. **Index of Matters Being Filed.** Attached hereto as Exhibit D is a true and correct copy of the Index of Matters Being Filed.

6. **List of Parties and Counsel.** Attached hereto as Exhibit E is a true and correct copy of the List of Parties and Counsel.

7. **Civil Cover Sheet.** Attached hereto as Exhibit F is a true and correct copy of the Civil Cover Sheet.

8. **Relief Requested.** Ameritas respectfully requests that the United States District Court for the Southern District of Texas, Houston Division, accept this notice of removal and that it assume jurisdiction of this action and issue all such further orders and processes as may be necessary to bring before it all parties necessary for the final trial hereof.

Respectfully submitted,

FIGARI + DAVENPORT, LLP

By: /s/ Andrew C. Whitaker  
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ATTORNEY FOR DEFENDANT  
AMERITAS LIFE INSURANCE CORP.

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been sent by email and certified mail, return receipt requested, to Mr. Thomas F. Coleman, Law Office of Tom Coleman, 9950 Westpark Drive, Suite 518, Houston, Texas 77063, and Mr. Larry J. Simmons, Germer PLLC, America Tower, 2929 Allen Parkway, Suite 2900, Houston, Texas 77019, on this 25th day of July, 2017.

/s/ Andrew C. Whitaker  
Andrew C. Whitaker